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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Revision of Part 22 and Part 90) WT Docket No. 96-18
of the Commission's Rules to)
Facilitate Future Development)
of Paging Systems)
)
Implementation of Section) PP Docket No. 93-253
309(j) of the Communications)
Act -- Competitive Bidding)

To: The Commission, *en banc*

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COMMENTS OF UNITED PAGING RESOURCES

UNITED PAGING RESOURCES (UPR), by its attorney, hereby respectfully submits its comments to the Federal Communications Commission in response to the Notice of Proposed Rule Making (NPRM) in the captioned proceeding, FCC 96-52, adopted February 8, 1996 and released February 9, 1996. For the reasons stated below, UPR submits that the frequency 929.6375 MHz should be excluded from the auction on the same basis as any other 929 MHz or 931 MHz frequency for which nationwide exclusivity has been granted.

Background

In September 1995, Radiofone, Inc., Paging Partners Corporation and USA Mobile Communications, Inc. II, each of whom are authorized for substantial regional paging systems on an exclusive basis on 929.6375 MHz, agreed to enter into a joint venture

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(United Paging Resources) to implement a nationwide paging system on 929.6375 MHz, to be operated on a single integrated basis under a central control facility located at the headquarters of Paging Partners Corporation. By reason of the number and location of paging transmitters authorized to the respective members, the venture qualified for nationwide exclusivity pursuant to §90.495 of the Commission's rules, 47 C.F.R. §90.495. The members determined that the venture would offer to interchange traffic on nondiscriminatory terms and conditions between its system and other licensees on 929.6375 MHz who desired to do so, and that the venture would also be open to additional membership from 929.6375 MHz licensees interested in joining.

Since that time, Page Telecommunications, L.L.C., which also operates an exclusive regional paging system on 929.6375 MHz, has agreed to join and participate in the venture as a full member; and other licensees of 929.6375 MHz have been invited to and may do so in the near future as well.

At the time the Commission adopted the NPRM and imposed the freeze on paging applications, the members of the venture were in the process of preparing the nationwide exclusivity request for 929.6375 MHz to be submitted to PCIA. After reviewing the NPRM and considering their position, the members have decided to proceed with the exclusivity request, which is expected to be filed at PCIA within the next few days.

Position of UPR

UPR submits that there is no principled basis for distinguishing between the frequency 929.6375 MHz and other frequencies for which licensees have been awarded substantial nationwide exclusivity. Accordingly, 929.6375 MHz likewise should be excluded from any auction the Commission adopts as a result of the NPRM.

But for the freeze on applications, which the Commission imposed without prior notice, UPR would have filed for and been granted nationwide exclusivity on 929.6375 MHz long prior to the time any auction rules are implemented. Moreover, the Commission has expressly proposed to exclude from the auction those 929 MHz and 931 MHz channels already authorized on a nationwide exclusive basis. (NPRM at ¶26). The Commission's rationale is simply that "[b]ecause these channels are not open to further licensing, we believe there is no practical need to assign them on a geographic basis." (*Id.*). The Commission also has posed for comment whether the frequency 931.4875 MHz should receive similar treatment, by reason of the fact that MTel occupies that channel "on virtually a nationwide basis". (*Id.* at ¶27).

UPR fully agrees with the Commission's proposal; and would further point out that these considerations likewise dictate that 929.6375 MHz also be excluded from any auctions. For the same reasons as applicable to any other nationwide exclusive 929 MHz frequency, there is no practical need to assign licenses on 929.6375 MHz on a geographic basis in light of the UPR venture.

Additionally, it is important to note that at the time the freeze was imposed, UPR in substance had already qualified for the grant of nationwide exclusivity on 929.6375 MHz under the standards set forth in §90.495 of the rules. The only missing element was the formal recognition of exclusivity which the members were in the process of requesting when freeze was imposed without prior notice. Thus, while the Commission may regard the freeze as purely procedural in other cases, if it ultimately precludes UPR from obtaining nationwide exclusivity under Section 90.495 of the rules as it now stands, the freeze would unquestionably have a materially adverse substantive -- hence unlawful -- impact on UPR as well.

Under all of these circumstances, United Paging Resources respectfully submits that the only proper and lawful course for the Commission to follow is to treat 929.6375 MHz similarly to other nationwide exclusive channels, and to exclude all of them from any auctions adopted in this proceeding.

Respectfully submitted,

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